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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 286

ALABAMA-TENNESSEE NATURAL GAS COMPANY,
PETITIONER

v.

FEDERAL POWER COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–43a) is reported at 359 F. 2d 318. The opinions of the Federal Power Commission (R. 126–177; 202–214) are reported at 31 F.P.C. 208, 928.

JURISDICTION

The judgment of the court of appeals (Pet. App. 44a) was entered on March 25, 1966. The petition for a writ of certiorari was filed on June 23, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTIONS PRESENTED

1. Whether, in fixing the rates of a natural gas company, the Federal Power Commission may require the company to reflect tax savings obtained by use of the liberalized depreciation provisions of the Internal Revenue Code.

2. Whether in the circumstances of this case the Commission was required to reopen the record for the receipt of additional evidence.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Natural Gas Act and the Federal Power Commission's Rules of Practice and Procedure are set forth in the Appendix, *infra*, pp. 16–19.

STATEMENT

The Federal Power Commission's order under review holds that the use by petitioner Alabama-Tennessee Natural Gas Company of rapid or liberalized depreciation in computing its income taxes resulted in tax savings that the pipeline must "flow through" to its ratepayers. Stated otherwise, the company may include in the cost of service (by which the reasonableness of the company's rates is measured) only the taxes it actually pays. Prior to its decision here, the Commission, acting on the supposition that liberalized depreciation resulted merely in tax deferrals, rather than tax savings, had permitted pipelines to "normalize" their taxes by including as a cost of service an amount equal to what the company would have paid in federal income taxes had it not used liberalized depreciation. The Commission had required the

"deferred" taxes to be carried on the company's books as a reserve account available for all corporate purposes except the payment of dividends, and had permitted the company to earn a return on the funds accumulated in this account. As a corollary to its adoption of the flow-through method, the Commission ruled that Alabama-Tennessee's rates could no longer reflect any return on such accumulation.

The Commission proceeding arose out of four successive increased rates filed by petitioner between 1954 and 1959. The Commission had suspended each of these rates for the maximum five-month statutory period and set them down for a hearing as to their reasonableness. In attempting to justify these rates, petitioner claimed, among other things, that it was entitled (1) to "normalize" its income taxes for cost-of-service purposes and (2) to receive a full return on the amount of its "deferred tax" reserve. During the hearings evidence was presented by the Tennessee Valley Municipal Gas Association, one of the intervenors who opposed the rate increases, to show that the excesses of "normalized" taxes over actual taxes were actually tax savings rather than tax deferrals; that rates should be fixed that would pass such savings to the customers; and that no return on previously accumulated "deferred" taxes should be allowed (R. 2–37). This testimony was subjected to cross-examination (*e.g.*, R. 37–42), but no rebuttal evidence was offered.

The examiner, following Commission precedents, rejected the flow-through theory. The intervening municipalities appealed, urging the Commission to re-

consider its treatment of liberalized depreciation for rate purposes, and pointing out that the Commission itself, in its Brief in Opposition to the State of California's petition for a writ of certiorari in the *El Paso* case,[1] had stated that the adoption of flow-through or normalization was discretionary with the Commission (R. 61–63). The Commission severed the liberalized-depreciation issue and set it down for special argument (R. 64–66), stating that it desired to hear argument with respect to all possible methods of handling liberalized depreciation for rate purposes and inviting the participation of *amici curiae* (R. 65–66). Fourteen separate *amici* briefs were filed representing all points of view in the natural gas and electric power communities.

On February 3, 1964, the Commission, by a 3–2 decision, held that in the future petitioner should flow through the tax reductions produced by liberalized depreciation. The Commission explained that its earlier approach had been based on the erroneous view that Congress' purpose in authorizing liberalized depreciation—to facilitate the modernization and expansion of industrial capacity—could be achieved only through normalization. The Commission pointed out that, while the courts had upheld its previous position allowing normalization, they had uniformly rejected the contention that Congress had prescribed how liberalized depreciation should be treated in fixing rates. Rather, the decisions rested "on in-

[1] *El Paso Natural Gas Co.*, 22 F.P.C. 260, affirmed on the liberalized depreciation issue, 281 F. 2d 567 (C.A. 5), certiorari denied *sub nom. California* v. *Federal Power Commission*, 366 U.S. 912.

dulgence of the Commission's finding that in practical effect a tax deferral rather than a tax savings was involved" (R. 130–136). Here, however, neither the evidence in the record nor the submissions of the *amici* indicated any factual support for the deferral theory: On the other hand, the exhibits and testimony introduced by the municipal intervenors (R. 140) "established that the use of liberalized depreciation deductions produced a tax saving; that flow-through of these savings to consumers would not burden future taxpayers; and that such flow-through resulted in stable rates and did not impair the financial integrity of the company or adversely affect its ability to attract capital for plant expansion."

The Commission noted that "a regulated utility will never be required to pay higher income taxes because of its election to claim liberalized depreciation unless its gross plant declines in dollar value as a result of lower demand or lower plant construction costs" (R. 141–142). That was unlikely since "the pattern of growth in demand and plant capacity with respect to Alabama-Tennessee and in the gas pipeline industry generally will continue for the reasonably foreseeable future" (R. 145–146). Hence Alabama-Tennessee's use of liberalized depreciation would probably produce "a permanent tax reduction" rather than a "certain increase in future taxes" (R. 142).

The Commission also pointed out that stimulation of new investment in the gas pipeline industry depends primarily on lower rates (R. 147):

> * * * [N]o amount of additional funds will stimulate new pipeline investment unless the

> market for additional gas exists. In fact, if the pipeline's customers do not require additional facilities the facilities will not be built, even if the pipeline might otherwise be induced to make the investment, since this Commission is duty-bound to deny a certificate for any expansion which is not required by the public convenience and necessity.
>
> Lower rates tend to generate a higher volume of sales and thus ultimately to require expansion of gas transmission facilities. * * *

Finally, the Commission concluded that, in light of its finding that the reserve accounts it had permitted under the normalization theory were not, in fact, needed for the purpose for which they were allowed—to defray a future tax liability—they should now be regarded as consumer-contributed capital on which (R. 151):

> * * * the rate of return should be zero since rates must be fixed upon the basis of a company's actual total costs, including its cost of capital, and no cost has been incurred in the accumulation of these balances.[2]

The Commission expressly declined to make its decision in the present case binding upon any other company, although it did state that, as to four pending pipeline rate cases in which the liberalized-depreciation question had been left open, the present decision would constitute a tentative decision on the point (R. 127; see Federal Power Commission Rules of Practice and Procedure, § 1.30(b), 18 C.F.R. 1.30(b)).

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[2] The sums covered into the reserve accounts had of course been collected from the ratepayers.

The only contested case in which the present decision has been followed without a complete new hearing, *Natural Gas Pipe Line Co.*, 33 F.P.C. 574, petitions for review pending, C.A. D.C., Nos. 19604, 19836, was one where evidence with respect to normalization v. flow-through had been placed in the record prior to the present decision.

Alabama-Tennessee made timely application for rehearing (R. 177–201). It argued that it had not thought it necessary to introduce evidence in rebuttal to that offered by the municipal intervenors on the flow-through v. normalization issue because it "appeared to Alabama-Tennessee that the issue had been laid to rest particularly with the judicial affirmance of *El Paso* [*supra*, p. 4]" (R. 185). However, it made no proffer of evidence, and no request to reopen the record for the receipt of additional evidence; it did not request an opportunity to make a showing in opposition to any facts of which the Commission had taken official notice (as provided by Section 1.26(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 1.26(d)); and it did not deny their correctness. Rehearing was denied (R. 210).

The court of appeals, in an exhaustive opinion by Judge Wisdom, unanimously affirmed the Commission's decision in all respects.

ARGUMENT

1. The question of the appropriate treatment for rate-regulation purposes of tax reductions resulting from the use of the liberalized depreciation method is, concededly, a recurring one of general interest and im-

portance in the regulatory community; and the present case represents a change in the thinking of the Federal Power Commission on the subject. Nevertheless, we do not think that the case calls for further review by this Court. The issue of flow-through v. normalization is basically one for resolution through the exercise of administrative discretion. When certiorari was sought in 1961 by the State of California, in the *El Paso* case, to review the Commission's earlier choice of normalization over flow-through, we stated:

> * * * Such a choice is not one which warrants review by this Court. Under the same principle, the choice is one which can be changed by the Commission should it become convinced the other method is preferable. * * * [*California* v. *Federal Power Commission*, 366 U.S. 912, O.T., 1960, No. 599, Brief in Opposition for Federal Power Commission, pp. 11–12].

Although the Commission has changed its approach, this precept remains unimpaired.[3]

(*a*) As the Court of Appeals for the Fourth Circuit

[3] The issue here is thus very different from that in No. 127, this Term, *Federal Power Commision* v. *United Gas Pipe Line Company of America, et al.*, in which certiorari has been granted to review another Fifth Circuit decision involving the treatment of tax reductions for rate purposes. There, the court of appeals held that the Commission, as a matter of law, is barred from allocating any part of the tax savings produced by the filing of consolidated returns to the regulated pipeline member of the consolidated group, if the group includes any company not subject to regulation which sustained tax losses and hence contributed to the group's over-all tax savings. The court reasoned that such an allocation would impermissibly involve the Commission in the regulation of activities outside of its jurisdiction. No such question of power is presented here.

pointed out in 1961 in *Cities of Lexington, etc., Ky.* v. *Federal Power Commission*, 295 F. 2d 109, where it sustained the Commission's previous view allowing normalization as within the range of the Commission's discretion, the rate treatment of liberalized depreciation is an area in which both federal and State regulatory agencies had adopted diverging views, with the "box score" then standing at 3–1 for the use of normalization at the federal level [4] and 22–18 at the State level (295 F. 2d at 112).[5] Nor is there novelty in a regulatory agency's changing from normalization to flow through; at least four State commissions have done so in the light of more mature consideration of the problem, with judicial approval in the one State

[4] The Interstate Commerce Commission follows flow-through. *Accounting for Federal Income Taxes*, 24 Fed. Reg. 1401, 318 I.C.C. 803, 808. The Securities and Exchange Commission and Civil Aeronautics Board still permit normalization, although the Civil Aeronautics Board refuses to allow any return on deferred tax balances. *General Passenger Fare Investigation*, 32 C.A.B. 291, 310, 326–327. (Actually, the Securities and Exchange Commission's practice is simply to require proper accounting and disclosure where normalization is otherwise permitted. Securities and Exchange Commission, Accounting Series, Release No. 85 (February 29, 1960).) The Bell Telephone system does not use liberalized depreciation for tax purposes. However, the Federal Communications Commission requires flow-through with regard to Western Union. *The Western Union Telegraph Co.*, 25 F.C.C. 535, 566–567; *Western Union Annual Report*, 1965, p. 20. Compare *American Telephone & Telegraph and Western Union Private Line Cases*, 34 F.C.C. 244, 356–357.

[5] After the court of appeals' decision in *Cities of Lexington*, Ohio switched from normalization to flow-through, *Re Cincinnati Gas & Electric Co.*, 35 P.U.R. 3d 392, 394–397, affirmed, 173 Ohio St. 473, 184 N.E. 2d 84, and Idaho adopted normalization, *Re Idaho Power Co.*, 46 P.U.R. 3d 166, 173–174.

where the commission was taken to court.[6] From this it appears—as we suggested in opposing the State of California's petition five years ago—that a regulatory commission's choice between the two methods is within the scope of its expert judgment.

(*b*) The Commission's discretion was in any event wisely exercised here. Under straight-line, or normal, depreciation, all depreciable property is written off in equal instalments over the course of its useful life. Section 167 of the Internal Revenue Code, however, permits a company (for tax purposes) to make larger deductions for depreciation in the earlier years. Under this method a company will have above-normal depreciation on its newer assets and below-normal depreciation on older assets. However, so long as the company continues to grow—so long as its plant additions and replacements exceed its plant retirements—it will have a larger depreciation deduction than under the straight-line method.

For the natural gas industry in general, and

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[6] Colorado: *Public Service Company of Colorado*, 12 P.U.R. 3d 158 (1956) (normalization); *Public Service Company of Colorado*, 34 P.U.R. 3d 186, 201–205 (1960) (flow-through); New Hampshire: *Order No. 6756*, 38 N.H. P.U.C. 18 (normalization) (1956); *Public Service Company of New Hampshire*, 18 P.U.R. 3d 523 (flow-through) (1957); Ohio: *Ohio Fuel Gas Co.*, 25 P.U.R. 3d 207, 209–210 (1958) (normalization); *Cincinnati Gas and Electric Co.*, 35 P.U.R. 3d 392 (1960) (flow-through), affirmed, *Cincinnati Gas and Electric Co.* v. *Public Utilities Commission*, 173 Ohio St. 473, 184 N.E. 2d 84; West Virginia: *Appalachian Electric Power Co.*, Case No. 4289, Forty-Second Annual Report of Public Service Commission of West Virginia, 332 (1955) (normalization); *Hope Natural Gas Co.*, 23 P.U.R. 3d 394, 400 (1958) (flow-through).

Alabama-Tennessee in particular, the Commission found that a pattern of growth would continue for the foreseeable future (R. 144–146), and accordingly that liberalized tax depreciation would consistently exceed straight-line depreciation, resulting in consistently lower taxes.[7] In these circumstances, to permit normalization is to require the ratepayers to provide funds against a contingency only remotely likely to occur.[8] To be sure, the Commission's conclusion that the use of liberalized depreciation results in tax savings, rather than deferrals, involves some projection into the future—but no more than would the conclusion that deferrals result. Indeed, as the court below pointed out (Pet. App. 33a), "the case for normalization requires more speculation than the case for flow-through. And it is at the expense of consumers."

(*c*) Petitioner's claim (Pet. 14–18) that the legislative history of Section 167 shows that Congress intended normalization to be the only allowable method for effectuating liberalized depreciation in the regulated sector has been uniformly and properly rejected. *El Paso Natural Gas Co.* v. *Federal Power Commission*, 281 F. 2d 567, 572 (C.A. 5), certiorari denied *sub nom. California* v. *Federal Power Commission*, 366

[7] We point out that even if the pipeline's plant retirements equaled replacements, liberalized depreciation would result in no lesser deduction than under straight-line depreciation, and taxes, hence, would not be higher.

[8] Since the Commission in the present case permitted retention of the already large "deferred tax" reserves built up from previous normalization (R. 128, 143), large amounts remain available to meet the unlikely possibility that Alabama-Tennessee may one day have to pay above-normal taxes because of its use of liberalized depreciation.

U.S. 912; *Cities of Lexington, etc., Ky.* v. *Federal Power Commission*, 295 F. 2d 109, 114, 117 (C.A. 4); cf. *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 316 F. 2d 659, 662 (C.A.D.C.), certiorari denied, 375 U.S. 881. These decisions, while recognizing that Section 167 was intended to stimulate investment in plant, teach that the Commission is not rigidly confined in the manner of implementing this objective. Indeed, these very decisions invited the Commission to re-evaluate the issue, as it has now done.[9]

In claiming that normalization is *the* method prescribed by Congress to stimulate investment (Pet. 16–17), petitioner also overlooks the Commission's conclusion (R. 146–149) that providing a utility with additional free capital does not stimulate new investment in pipeline facilities unless there is a sufficient market for additional gas to warrant the issuance of a certificate of public convenience and necessity under Section 7(c) of the Act. There is no indication that there is any shortage of capital preventing the certification of additional facilities where there would be a market for the extra gas. Moreover, petitioner does not appear to challenge the Commission's con-

[9] Thus, there is no conflict, as petitioner claims (Pet. 11), with *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, *supra*. In addition, we point out that there was actually no issue in that case of flow-through v. normalization. The Commission order under review allowed normalization, and the only challenge was from the pipeline which claimed that more than 1½ percent return should be allowed on the capital provided by the reserves accumulated by normalization. The court made plain that it was not deciding any issues not decided by the Commission or challenged before it. 316 F. 2d at 661.

clusion that flow-through will stimulate investment because the resulting reduction of rates will "tend to generate a higher volume of sales and thus ultimately to require expansion of gas transmission facilities" (R. 147).[10]

2. Petitioner's allegations of procedural infirmities (Pet. 18–21) were, we submit, properly rejected by the court below (Pet. App. 33a, 35a–40a), and raise no issue warranting review by this Court.

(*a*) Petitioner contends that the Commission should have reopened the record after it severed the liberalized-depreciation issue. However, that issue had been timely raised by the intervening municipalities in the original hearing and petitioner could then have attempted to rebut the evidence introduced to support the claim that the Commission should change from normalization to flow-through. In its application to the Commission for rehearing, petitioner protested against severance of the liberalized-depreciation issue on the grounds (among others) that the record would not support the intervenors' position and that it had reasonably declined to present any evidence to rebut that introduced by the intervenors. However, as the court below noted (Pet. App. 39a–40a), even at this point petitioner made no request to reopen the record

[10] Petitioner, in arguing (Pet. 16) that flow-through is not a permissible method for implementing Congress' intent because Congress had refused to adopt a proposal for a tax reduction, neglects to mention that what had been rejected was not a *corporate* tax reduction, but a general tax reduction to lower bracket taxpayers as a direct aid to purchasing power. See 100 Cong. Rec. 3432, 3457, 3517–3522, 3527, 3530–3531, 3561–3563, 9063, 9168, 9267–9276, 9289, 9300, 9470, 9481; see, also, 100 Cong. Rec. 3299 (President's Address).

although it was free to do so. Sections 1.33(a)(1) and 1.33(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 1.33(a)(1) and 1.33(c). Indeed, at no point has petitioner specified the kind of evidence that it would offer in the event of a reopening.

(*b*) Petitioner argues that the Commission improperly relied on secondary sources for factual determinations. However, the Commission is entitled, under both the Administrative Procedure Act, § 7, and the Commission's rules, § 1.26(d), 18 C.F.R. 1.26(d), to take official notice of facts within its specialized competence (see Attorney General's Manual on the Administrative Procedure Act (1947), pp. 79–80), provided that any party is, on request, given an opportunity to show the contrary. The Commission specifically identified the facts of which it was taking notice here (R. 144–146; see *Market Street R. Co.* v. *Railroad Commission of California,* 324 U.S. 548, 559–560), but, while objecting to reliance upon the facts noticed, petitioner did not ask that the record be reopened to permit it to controvert them.

(*c*) There is no merit to the contention that the present case was not a proper vehicle for deciding an issue of industry-wide importance. The ruling that Alabama-Tennessee must use flow-through is not binding upon other pipeline companies, who remain free, under the Commission's decision, to present evidence showing that factual differences between their cases and Alabama-Tennessee's justify their continuing to use the normalization method. See Statement, *supra,* pp. 6–7.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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Federal Power Commission.

JULY 1966.

APPENDIX

2. The pertinent portions of the Natural Gas Act, June 21, 1938, c. 556, 52 Stat. 821–833, as amended, 15 U.S.C. 717–717w, provide as follows:

Section 4(d), 15 U.S.C. 717c(d):

Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

Section 4(e), 15 U.S.C. 717c(e):

Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and

delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

Section 5(a), 15 U.S.C. 717d(a):

Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or

gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

3. Pertinent portions of F.P.C. Rules of Practice and Procedure are as follows:

Section 1.26(d), 18 C.F.R. 1.26(d):

Official notice of facts. Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter of technical or scientific fact of established character peculiarly within the general knowledge of the Commission as an expert body: *Provided,* That any party shall, on timely request, be afforded an opportunity to show the contrary.

* * * * *

Section 1.30(b), 18 C.F.R. 1.30(b):

Recommended or tentative decisions. In proceedings in which, prior to the filing of the presiding officer's report, the Commission, with notice to the parties, directs (in specific cases or by general rule) the certification to it of the rec-

ord for decision by the Commission, unless otherwise provided, the presiding officer's report shall constitute a recommended decision, except that in rule making or determining applications for initial licenses, in lieu thereof, (1) the Commission may designate any of its responsible officers to recommend a decision, or (2) the Commission may issue a tentative decision. Such recommended or tentative decision shall be served upon all parties, or their attorneys of record, and staff counsel, who may file exceptions in the manner and within the time provided in § 1.31.

Section 1.33(a)(1), 18 C.F.R. 1.33(a)(1):

By parties—(1) *Petition to reopen.* At any time after the conclusion of a hearing in a proceeding or adjournment thereof sine die, but before issuance by the presiding officer of an initial decision, any party to the proceeding or staff counsel may file with the presiding officer a petition to reopen the proceeding for the purpose of taking additional evidence. Copies of such petition shall be served upon all participants, or their attorneys of record, and shall set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing, and shall in all other respects conform to the applicable requirements of §§ 1.7 and 1.15 to 1.17, inclusive.

* * * * *

Section 1.33(c), 18 C.F.R. 1.33(c):

By Commission action. The above provisions of this section shall apply equally to petitions for and the issuance by the Commission of an order reopening the proceeding, where an initial decision has been issued by the presiding officer but no Commission decision has yet been issued, or where the initial decision by a presiding officer has been omitted and no Commission decision has yet been issued.

U.S. GOVERNMENT PRINTING OFFICE: 1968